



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 7406094

Date: APR. 27, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a civil engineer, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

II. ANALYSIS

The Petitioner has worked for several development and construction companies, serving as vice president of [REDACTED], since 2000. The Petitioner seeks employment as a civil engineering consultant in the United States.

A. Translations

Apart from the specific evidentiary requirements for each criterion, the Director took issue with the submitted translations of foreign-language documents. The regulation at 8 C.F.R. § 103.2(b)(3) states: “Any document containing foreign language submitted to USCIS shall be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.” Rather than submit a separate certification for each translation, the translator prepared collective certifications for several groups of translated documents. Initially, these collective certifications did not identify the translated documents associated with them. In a request for evidence, the Director stated: “the submission of a single translation certification that does not specifically identify the document or documents it purportedly accompanies does not meet the requirements of the regulation.” In response, the Petitioner submitted new certifications that identified the translated documents. Nevertheless, the denial decision repeated the quoted passage, indicating that the certifications did not identify the translated documents.

On appeal, the Petitioner asserts that the Director imposed “an extraneous demand” not found in the regulations, and that the submitted certifications “indicate with specificity the documents they purport to translate.” In the absence of specific, articulated grounds for rejecting or discounting the translations, we find that the submitted certifications comply with the relevant requirements.

B. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims to have met four criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director found that the Petitioner had not met any of the claimed criteria. On appeal, the Petitioner maintains that he meets the four criteria claimed previously. After reviewing all of the evidence in the record, we find that the Petitioner has met criterion (vi), relating to authorship of scholarly articles in the field, in professional or major trade publications or other major media. We agree with the Petitioner that the articles submitted are scholarly in nature, and appeared in professional publications. The record does not support the Director's conclusion that the Petitioner wrote "articles in popular magazines."

We discuss the other claimed criteria below.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

The Petitioner identifies three projects for which, he states, he "received a Luban Award," "the highest national honor and award in China's building design and engineering industry." The Petitioner asserts that "Luban Award winners attract a great deal of media attention," but does not submit examples or show the extent, if any, to which that coverage featured the Petitioner.

Background information indicates that the Luban Award goes "to the enterprises that have created first-class projects." The three submitted Luban Award certificates show the names of various construction companies. Various notices name the Petitioner as being in charge of various elements of the award-winning projects, such as "government coordination" and the "Construction Department." These notices date from between four and seven years before the dates on the award certificates, and therefore the notices do not directly show that the Petitioner retained these responsibilities throughout the life of each project.

The Petitioner states that he "received [the] Tianyou Zhan Award" twice. As with the Luban Award, the submitted Tianyou Zhan Award certificates identify the recipients as engineering or construction corporations, and documents from several years before the awards identify the Petitioner as the engineering director of the projects.

The Director found that the Luban and Tianyou Zhan Awards do not satisfy the regulatory criterion, because the Petitioner did not personally receive the awards. On appeal, the Petitioner contends that "the plain language of this criterion does not require that the alien be the named award recipient."

The language of the criterion requires "[d]ocumentation of *the alien's receipt* of . . . prizes or awards," rather than evidence of involvement in award-winning projects or employment with award-winning companies. Whether or not his name is on the awards, the Petitioner must have personally received the awards. He initially claimed that he personally "received a Luban Award" and "received [the] Tianyou Zhan Award," but the record does not support these claims.

The Petitioner asserts that he deserves much of the credit for the award-winning projects. His authority over award-winning projects would have been a matter for consideration in the final merits determination, if the proceeding had reached that stage.

The Petitioner was a named recipient of two prizes relating to his work on a bridge in [REDACTED]. One of these awards, the [REDACTED] Science and Technology Progress Award, is a local award from the [REDACTED] Municipal People's Government. The Petitioner did not establish that this municipal award is nationally or internationally recognized.

The Petitioner and his collaborators also won a Second Prize for Science and Technology Progress from China's Ministry of Construction. The Petitioner claims to have submitted background information about this award under the heading "Exhibit P," but he does not specifically identify the materials in question, and no such documentation is evident in the record. Exhibit P consists only of information relating to the [REDACTED] municipal award. The Science and Technology Progress prize is from a national entity, but this is not, by itself, evidence of national or international recognition of the prize.

The Petitioner has not established his receipt of nationally or internationally recognized prizes or awards.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)

The Petitioner has served in the following positions:

- Vice President, [REDACTED];
- Director [REDACTED];
- Vice Chairman, [REDACTED] and [REDACTED]
and
- Vice President, [REDACTED]

The Director found that the Petitioner did not establish that his roles were leading or critical, and also did not establish that the organizations have distinguished reputations.

"Reputation" is defined as "overall quality or character as seen or judged by people in general"; "recognition by other people of some characteristic or ability"; or "a place in public esteem or regard."¹ These definitions show that a reputation, distinguished or otherwise, derives from outside perception, not from self-assessment. Therefore, the Petitioner cannot establish the reputation of an organization based only on statements from officials of that organization and self-generated promotional materials. Information about an organization's reputation must come, instead, from reliable and identified sources outside that organization. (If the sources are not identified, then we cannot account for possible bias or error in the descriptions offered.)

¹ <https://www.merriam-webster.com/dictionary/reputation> (last visited Apr. 16, 2020).

The Petitioner submitted several pages of information about the four organizations named above, but the Petitioner has not identified the sources of that information. The Director, in the denial notice, noted the lack of attribution of key documents, a deficiency that the Petitioner does not address or remedy on appeal. Instead, the appellate brief contains statements from counsel about the reputations of the four organizations. Assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel identifies no sources for the information stated on appeal.

The insufficiency of the submitted evidence does not rule out the possibility that the organizations have distinguished reputations, but the burden is on the Petitioner to establish eligibility. While the Director is required to explain the reasons for denying the petition, this obligation does not create a presumption of eligibility that the Director must overcome.

Because the Petitioner has not provided objective documentary evidence from identified sources, he has not established that the organizations have distinguished reputations. Therefore, we need not address the separate issue of whether he performed in leading or critical roles for those organizations.

In light of the above conclusions, the Petitioner cannot meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of the remaining criterion cannot change the outcome of this appeal. Therefore, we reserve that issue.²

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought. Various individuals have provided letters stating that he is at the top of his field, but the record does not sufficiently corroborate these assertions to meet the Petitioner's burden of proof.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

² See *INS v. Bagamashad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).